

Message Text

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USOECD

PASS: EB FOR MEISSNER AND SMITH; TREASURY FOR HUFBAUER;
COMMERCE FOR KATZ

E.O. 11652: N/A
TAGS: EINV, OECD
SUBJECT: COMMITTEE ON INTERNATIONAL INVESTMENT AND
MULTINATIONAL ENTERPRISES (CIME): MEETING JULY 7-8

REF: (A) IME(77)7; (B) IME(77)12; (C) OECD 19048;
(D) IME(77)13; (E) IME(77)9; (F) IME(77)10

A. SUMMARY

1. ALTHOUGH LARGELY INCONCLUSIVE ON SUBSTANCE, CIME MEETING WAS GENERALLY CONSTRUCTIVE AND LED TO USEFUL PROCEDURAL RESULT. THIS INCLUDED SETTING UP TWO INFORMAL SUB-GROUPS, CHAIRED BY CIME DELS, WHICH SHOULD PROVE HELPFUL, RESPECTIVELY, IN (A) HANDLING EXCHANGE AND COORDINATION OF VIEWS ON MNE WORK IN OTHER INTER-
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NATIONAL FORA, AND (B) FORMULATING RESPONSE TO TUAC AND BELGIAN GOVERNMENT REGARDING THEIR REQUESTS FOR INTERPRETATION OF MNE GUIDELINES IN CONNECTION WITH ILLUSTRATIVE CASES RAISED. ON THIS KEY ISSUE OF INTER-
PRETATION OF GUIDELINES, AFTER EXTENDED DEBATE, COMMITTEE REACHED BROAD AGREEMENT (A) THAT CONCLUSIVE INTERPRETATIONS WERE NOT APPROPRIATE ON REGULAR, CONTINUING BASIS,

BUT (B) THAT ISSUES RAISED BY ILLUSTRATIVE CASES NEEDED TO BE NOTED AND TAKEN INTO ACCOUNT IN THE REVIEW PROCESS LOOKING TOWARDS POSSIBLE REVISIONS AFTER THREE YEARS, AND IN CONNECTION WITH CIME'S REQUIRED PERIODIC REPORTS TO THE COUNCIL.

2. U.S. DEL (SMITH) ACHIEVED PRINCIPAL OBJECTIVE OF AVOIDING DETAILED CONSIDERATION OF INTERPRETATIONS OF GUIDELINES BASED ON ILLUSTRATIVE CASES AND OBTAINED AGREEMENT THAT THE SECRETARIAT DOCUMENTS WHICH TAKE THIS APPROACH NOT BE GIVEN ANY APPROVED STATUS OR BE AUTHORIZED FOR DISTRIBUTION BEYOND CIME. AT SAME TIME, WE AVOIDED CONFRONTATIONAL SITUATION IN WHICH USG WOULD HAVE BEEN LARGELY ISOLATED, THROUGH THE ESTABLISHMENT OF SUB-GROUP MECHANISM WHICH HOLDS PROMISE OF BEING ABLE TO DEAL WITH THIS ISSUE ON BROADLY AGREED BASIS.

3. ON NATIONAL TREATMENT CONSULTATIONS, U.S. DEL BOWED TO GENERAL VIEW THAT FIRST ROUND IN FALL, 1977 BE ON FUNCTIONAL BASIS OF TYPE OF EXCEPTIONS, WITH UNDERSTANDING THAT THIS WAS WITHOUT PREJUDICE TO LATER CONSIDERATION ON BASIS OF COUNTRY-BY-COUNTRY REVIEWS.

4. CIME WILL MEET NEXT ON DECEMBER 5-6. INFORMAL SUB-GROUP COVERING OTHER INTERNATIONAL FORUMS IS SCHEDULED TO MEET SEPTEMBER 21-22 AND SUB-GROUP COVERING MNE CASES LIMITED OFFICIAL USE

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WILL TENTATIVELY MEET OCTOBER 13-14. END SUMMARY

B. EXCHANGE OF VIEWS ON MEETINGS OF UN COMMISSION ON TNC'S AND IGWG ON CODE OF CONDUCT

5. IN ABSENCE OF SWEDISH DEL (NIKLASSON) WHO IS ALSO CHAIRMAN OF UN INTER-GOVERNMENTAL WORKING GROUP (IGWG), UK DEL (MUELLER) SUMMARIZED RESULTS OF IGWG AND TNC COMMISSION MEETINGS HELD IN APRIL AND MAY, IN FOLLOWING TERMS: (A) CONCLUSION OF BOTH MEETINGS WERE DISAPPOINTING AND PROSPECTS FOR PROGRESS IN CODE EXERCISE IN IMMEDIATE FUTURE NOT PROMISING (SHE MENTIONED A FIVE-YEAR TIME FRAME); (B) THERE IS REASON TO BE CONCERNED OVER PROCEDURES, INCLUDING ADEQUACY OF INVOLVEMENT OF GOVERNMENTS, IN UN CENTER'S PROJECT FOR COMPILING PROFILES OF INDIVIDUAL FIRMS; OBJECTIVITY OF RESEARCH BEING DONE BY CENTER; AND ROLES OF CENTER'S PERSONNEL OR CONSULTANTS IN ITS TECHNICAL ASSISTANCE ACTIVITIES. IN CONCLUDING OBSERVATIONS, UK DEL EMPHASIZED NEED TO ESTABLISH WORKABLE DIALOGUE WITH LDC'S ON CODE AND SPOKE FAVORABLY OF

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SUGGESTION MADE BY ARGENTINE DEL TO IGWG (FIGUERERO)
THAT ROUNDTABLES BE ESTABLISHED FOR PURPOSE OF INFORMAL
DC-LDC DISCUSSIONS.

6. U.S. AND OTHER DELS SAID THEIR GOVERNMENTS SHARED
DISAPPOINTMENT ON LACK OF PROGRESS IN TNC CODE EXERCISE
AND FAVORED ROUNDTABLE CONCEPT. U.S. DEL ALSO NOTED U.S.
CONCERNS ABOUT UN CENTER'S EXPERT GROUP ON THE DEVELOP-
MENT OF INTERNATIONAL STANDARDS OF ACCOUNTING AND REPORT-
ING, SPECIFICALLY REGARDING LACK OF CONSULTATION WITH
GOVERNMENTS ON ITS COMPOSITION AND ITS INTENTION TO MOVE
BEYOND HARMONIZATION OF STANDARDS TO INFORMATION DISCLO-
SURE ISSUES.

7. ESTABLISHMENT OF INFORMAL CONTACT GROUP: INFORMAL
DISCUSSION AT DINNER JULY 6, PRIOR TO MEETING, ATTENDED
BY CIME CHAIRMAN (ABRAMOWSKI) AND KEY HEADS OF DELEGA-
TIONS, REVEALED GENERAL CONSENSUS IN FAVOR OF INCREASED
CONSULTATIONS ON ISSUES IN UN CODE EXERCISE AND OTHER
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MATTEOS OF GENERAL CONCERN. ON BASIS OF THIS CONSENSUS, AGREEMENT WAS REACHED ON PLAN FOR FORMATION OF INFORMAL CONTACT GROUP WITH OPEN MEMBERSHIP. AS APPROVED AFTER CIME DISCUSSION, THIS GROUP IS SCHEDULED TO MEET AT OECD SEPTEMBER 21-22 UNDER CHAIRMANSHIP OF NETHERLANDS DEL TO CIME AND UN COMMISSION MEETINGS (SANDERS). IN VIEW OF GENERAL SENSITIVITY TO AVOIDING APPEARANCE OF FORMATION OF DC BLOC, STRESS PLACED ON INFORMALITY OF MEETINGS AND ON PURPOSE OF DISCUSSIONS AS INTELLECTUAL EXERCISES, RATHER THAN FOR PREPARATION OF DC PROPOSALS, ALTHOUGH TEXTS MAY RESULT. AGENDA FOR FIRST MEETING WILL INCLUDE ISSUES RELATING TO (A) LINKAGE OF PORTIONS OF UN CODE RELATING TO RESPONSIBILITIES OF ENTERPRISES (SECTION 3A OF IGWG DRAFT OUTLINE) TO OBLIGATIONS OF GOVERNMENTS (SECTION 4) AND (B) COLLECTION OF INFORMATION BY UN CENTER. UK DEL WILL DRAFT PAPER ON LINKAGE AND CANADIAN DEL PAPER ON INFORMATION ISSUES.

8. CIME DISCUSSION OF ILO DRAFT DECLARATION OF PRINCIPLES CONCERNING MNE'S WAS BRIEF AND WITHOUT CONTROVERSY. U.S. DEL POINTED OUT DRAFT IS COMPROMISE ARRIVED AT AFTER OTHER PARTICIPANTS IN NEGOTIATIONS PERSUADED TO USE OECD GUIDELINES AS BASIS FOR DISCUSSION.

C. NATIONAL TREATMENT

9. IN DISCUSSION OF CIME PROCEDURES FOR CONSULTATIONS ON NATIONAL TREATMENT, U.S. DEL, WITH VIGOROUS SUPPORT FROM SWISS, STRONGLY ADVOCATED COUNTRY-BY-COUNTRY APPROACH TO EXAMINATION OF EXCEPTIONS, ARGUING THAT THIS WOULD BEST SERVE OBJECTIVE OF EXTENDING APPLICATION OF PRINCIPLE. HOWEVER, OTHER DELS SPOKE IN FAVOR OF FUNCTIONAL APPROACH OF EXAMINING RESTRICTIONS BY TYPE. CANA-

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DIANS ARGUED THAT DISCUSSION OF CATEGORIES WOULD (A) BE OPTIMAL BASIS FOR PRODUCING CONSISTENCY IN FORMAT AND COVERAGE OF NATIONAL NOTIFICATIONS, AND (B) FACILITATE PARTICIPATION BY EXPERTS ON SUCH CATEGORIES OF EXCEPTIONS. IN VIEW OF ISOLATED POSITION, U.S. DEL ACCEDED TO ADOPTION OF FUNCTIONAL APPROACH FOR FIRST ROUND EXAMINATION, BUT MADE IT CLEAR THAT POSSIBILITY OF COUNTRY-BY-COUNTRY EXAMINATION SHOULD NOT BE FORECLOSED FOR LONGER RUN. FIRST ROUND OF CONSULTATIONS WILL TAKE PLACE ON FIRST DAY OF NEXT CIME MEETING. AS OUTLINED IN REFD0C A, PRIORITY WILL BE PLACED ON EXAMINATION OF EXCEPTIONS BY TYPES, WITH CONSIDERATION OF REMAINDER BY SECTOR IF TIME AVAILABLE.

10. MEMBER COUNTRIES' VIEWS WERE MIXED ON BIAC PARTICIPATION IN NATIONAL TREATMENT CONSULTATIONS PROCEDURE, RESULTING IN DECISION TO DEFER CONSIDERATION OF THIS ISSUE. CHAIRMAN NOTED THAT, IN INTERIM, DELEGATES COULD CONSULT WITH THEIR NATIONAL BIAC COMMITTEES IN PREPARATION FOR INITIAL CIME REVIEW OF EXCEPTIONS.

D. "INTERPRETATION" OF MNE GUIDELINES

11. MOST ANIMATED DISCUSSION OF FIRST DAY OF CIME DELIBERATIONS CONCERNED WHETHER COMMITTEE HAS A MANDATE TO "INTERPRET" THE GUIDELINES (AGENDA ITEM 4). U.S. DEL SPOKE AT OUTSET OF DISCUSSION AND EXPRESSED USG VIEW THAT NEITHER CIME NOR SECRETARIAT HAVE A MANDATE TO INTERPRET

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GUIDELINES OR TO ISSUE STATEMENTS REFLECTING THEIR INTERPRETATIONS ON A CONTINUING BASIS. U.S. DEL HIGHLIGHTED OUR CONCERN OVER THE EXTENSIVE INTERPRETATION OF THE GUIDELINES CONTAINED IN REFDOC B AND POINTED OUT THAT PAPER WENT WELL BEYOND THE DISCUSSION AMONG MEMBER GOVERNMENTS AT THE LAST CIME MEETING AND AS REFLECTED IN THE SUMMARY RECORD OF THAT MEETING.

12. U.S. VIEW THAT CIME DOES NOT HAVE A MANDATE TO INTERPRET THE GUIDELINES WAS SUPPORTED INITIALLY ONLY BY SWISS AND FRENCH' OTHER DELEGATIONS ARGUED THAT TO FULFILL ITS FUNCTION, CIME MUST "INTERPRET" GUIDELINES. HOWEVER, AS DISCUSSION PROGRESSED, IT BECAME CLEAR THAT DIVERGENCE OF VIEWS WAS NOT AS GREAT AS IT HAD ORIGINALLY APPEARED. OTHER DELEGATIONS ALSO UNDERLINED THAT CIME IS NOT A TRIBUNAL OR AN INTERPRETATIVE BODY AND THAT IT CANNOT DEVELOP CASE LAW. DISCUSSION BEGAN TO FOCUS ON IMPLEMENTATION OF CIME'S MANDATE TO (A) PREPARE PERIODIC REPORTS TO OECD COUNCIL ON ITS EXPERI- LIMITED OFFICIAL USE

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ENCE AND (B) TO MAKE RECOMMENDATIONS CONCERNING GUIDE- LINES AFTER THREE-YEAR PERIOD. THERE SEEMED TO BE GENERAL CONSENSUS IN SUPPORT OF OPINION EXPRESSED BY U.S. DEL THAT CIME REPORT ON RESULTS OF THREE-YEAR REVIEW, WHICH MIGHT INDEED HAVE INTERPRETATIVE ASPECT, WOULD BE BASED ON AGGREGATE EXPERIENCE OVER THREE-YEAR PERIOD, BUT THAT IN THE PROCESS OF ACCUMULATING EXPERI- ENCE, CIME SHOULD NOT MAKE CONCLUSIVE INTERPRETATIONS OR GO INTO INDIVIDUAL CASES.

13. SECRETARIAT PAPER ON AGENDA ITEM 4 (REFDOC B): IN HIS INITIAL STATEMENT ON THIS ITEM, THE U.S. DEL EXPRESSED PARTICULAR REGRET THAT THE VIEWS EXPRESSED IN REFDOC B HAD BEEN INCLUDED IN AN ARTICLE PUBLISHED IN THE "OECD OBSERVER," AUTHORED BY SPECIAL CONSULTANT VOGELAAR (REFTEL C). U.S. DEL STATED USG BELIEF THAT SUCH PUBLICATION HAD BEEN INAPPROPRIATE. IN CIME DISCUSSION, ONLY ONE DELEGATION (NETHERLANDS) SECONDED THIS U.S. CONCERN. (NOTE: AT A PRIVATE LUNCH ON FRIDAY, OTHER DELEGATIONS DID INDICATE THEIR BELIEF THAT MR. VOGELAAR HAD OUTLIVED HIS USEFULNESS, ALTHOUGH THEY PUT THIS MORE IN ORGANIZATIONAL RATHER THAN PERSONAL TERMS.)

14. A NUMBER OF DELEGATIONS ECHOED DEEP CONCERN U.S. HAD EXPRESSED OVER PARAGRAPH 7 OF REFDOC B AND ITS CAVALLIER ATTITUDE TOWARD CUSTOMARY INTERNATIONAL LAW. CONSENSUS WAS THAT PARAGRAPH WAS DANGEROUS IN ITS REFERENCE TO GUIDELINES EVENTUAL PASSAGE INTO CUSTOMARY INTERNATIONAL LAW, AND HAD NO PLACE IN DOCUMENT.

15. SPECIFIC DISCUSSION OF ISSUES RAISED IN REFDOC B, SPECIFICALLY RE PARAGRAPH 6 OF EMPLOYMENT AND INDUSTRIAL RELATIONS SECTION OF GUIDELINES, WAS REMANDED TO THE LIMITED OFFICIAL USE

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AD HOC SUB-GROUP (SEE NEXT PARAGRAPH). WHAT SPECIFIC DISCUSSION THERE WAS (MAINLY BY THE NETHERLANDS AND NORWAY) FOCUSED ON THE EXTENT OF A PARENT COMPANY'S RESPONSIBILITY FOR THE DEBTS OF ITS SUBSIDIARY. (NOTE: ISSUE OF "MORAL LIABILITY" OF MNE'S FOR SUBSIDIARIES' ACTIONS MAY BE TROUBLESOME ONE IN FUTURE.)

16. AD HOC SUB-GROUP: THE ESTABLISHMENT OF AN AD HOC SUB-GROUP TO LOOK MORE DEEPLY AT THE ISSUES INVOLVED IN THE BADGER CASE AND THE TUAC CASES (REFDOC D) (SEE PARAS 18-19 BELOW) WAS PROPOSED BY THE UK FRIDAY MORNING. PROPOSAL MET WITH WIDE APPROVAL AND FIRST MEETING OF GROUP TENTATIVELY SCHEDULED FOR OCTOBER 13-14. LEVY (SWITZERLAND) WILL CHAIR.

17. ALTHOUGH SOME DELEGATES MADE INITIAL SUGGESTION THAT A PRINCIPAL TASK OF SUB-GROUP SHOULD BE TO REVISE SECRETARIAT PAPER (REFDOC B), U.S. DEL RECOMMENDATION THAT GROUP DEAL WITH ISSUES USING AVAILABLE DOCUMENTATION MET WITH GENERAL ACCEPTANCE. ANOTHER TASK WILL BE TO DETERMINE WHETHER, AND HOW, CIME SHOULD PROCEED WITH INVITATIONS TO INDIVIDUAL ENTERPRISES AS PROVIDED FOR IN PARAGRAPH 3 OF COUNCIL DECISION ESTABLISHING CIME. GENERAL OPINION WAS THAT COMPANY VIEWS MIGHT BE USEFUL IN FUTURE, BUT THAT PREMATURE AT PRESENT TO CONSIDER INVITATIONS TO MNE'S. U.S. DEL WELCOMED GERMAN DELEGATE'S VIEW THAT COMPANIES NOT BE INVITED UNLESS CIME WAS SURE THEY WOULD WELCOME SUCH AN INVITATION, AS INDICATED, FOR EXAMPLE, BY INFORMAL CONTACTS BETWEEN MEMBER

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GOVERNMENTS AND COMPANIES CONCERNED. IN THAT REGARD, U.S. DEL NOTED HE HAD BEEN IN TOUCH WITH BADGER FROM TIME TO TIME AND MIGHT BE IN A POSITION TO REFLECT THEIR FEELING ON THIS POINT IF APPROPRIATE IN THE AD HOC SUB-GROUP. GENERAL CONSENSUS ALSO THAT, SINCE BADGER CASE WAS FINISHED, IT WOULD SERVE NO USEFUL PURPOSE TO INVITE THAT COMPANY TO APPEAR BEFORE CIME TO GIVE ITS VIEWS.

18. TUAC CASES: DISCUSSION OF REFDOD D CENTERED ON TWO ISSUES: (A) HOW SHOULD CIME RESPOND TO TUAC'S PRESENTATION OF CASES AT LAST MEETING AND (B) WHAT PROCEDURE SHOULD CIME USE IN DEALING WITH CASES WHICH TUAC BRINGS BEFORE IT.

19. CIME AGREED THAT RESPONSE SHOULD BE ALONG LINES OF DISCUSSION REFLECTED IN PARAGRAPH 2 OF SUMMARY OF LAST MEETING AND THAT ANY GREATER SPECIFICITY IN RESPONSE SHOULD DEPEND ON OUTCOME OF EXCHANGE OF VIEWS ON TUAC CASES IN AD HOC GROUP MEETING (SEE PARA 7). PROCEDURE
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FOR DEALING WITH GENERAL ISSUES IN INDIVIDUAL CASES BROUGHT BY TUAC ALSO LEFT TO WISDOM OF SUB-GROUP WHICH WILL MAKE RECOMMENDATION TO FULL COMMITTEE.

E. COORDINATION OF MNE ACTIVITIES WITHIN OECD

20. SECRETARIAT PRESENTED ORAL REPORTS ON NATURE AND CURRENT STATUS OF MNE-RELATED WORK IN VARIOUS OECD COMMITTEES, INCLUDING FINANCIAL AFFAIRS (WORKING PARTY 6 ON TAXATION), SCIENCE AND TECHNOLOGY, RESTRICTIVE BUSINESS PRACTICES AND INDUSTRY COMMITTEE (WORKING PARTY 1). CIME CHAIRMAN NOTED WITH SATISFACTION THAT WORK IN THESE GROUPS IS PROCEEDING IN LINE WITH GENERAL THINKING IN HIS COMMITTEE. NO SUGGESTIONS WERE ADVANCED FOR FUTURE TASKS CIME MIGHT WANT THESE COMMITTEES TO PURSUE.

F. FUTURE ACTIVITIES OF CIME

21. SCHEDULE OF MEETINGS AS SUGGESTED BY SECRETARIAT (DOCUMENT IME(77)6) WAS REVIEWED AND MINOR CHANGES WERE SUGGESTED. NEXT MEETING WILL COVER (A) RESULTS OF FIRST

SESSION (OCTOBER 13-14) OF CIME'S NEWLY ESTABLISHED AD HOC CONTACT GROUP ON ACTIVITIES IN OTHER INTERNATIONAL FORUMS AND (B) NATIONAL TREATMENT EXCEPTIONS, AS PRIORITY TASKS, PLUS (C) EXCHANGE OF VIEWS ON ONGOING WORK IN UN AND OECD (LATTER INCLUDING DISCUSSION OF REPORT BY RESTRICTIVE BUSINESS PRACTICES COMMITTEE). ISSUE OF INCENTIVES/DISINCENTIVES WILL NOT BE ON CIME AGENDA UNLESS SPECIFIC REQUEST SUBMITTED BY MEMBER GOVERNMENT. THERE WILL BE NO SECOND MEETING THIS YEAR WITH BIAC AND TUAC. (NOTE: TUAC HAD INDICATED IT WANTED TO MEET AGAIN WITH CIME THIS YEAR. HOWEVER, SINCE CIME WILL NOT REVIEW RECOMMENDATIONS OF SUB-GROUP ON TUAC CASES UNTIL DECEMBER LIMITED OFFICIAL USE

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BER MEETING, DELEGATES DID NOT BELIEVE SECOND MEETING WITH TUAC THIS YEAR DESIRABLE. CIME DOES INTEND TO REPLY TO TUAC, HOWEVER, ALONG LINES INDICATED PARAGRAPHS 18 AND 19.) AS FOR SPRING, 1978, UK AND SWITZERLAND WELCOMED INCLUSION OF DISCUSSION OF DIRECT INVESTMENT TRENDS IN MEMBER COUNTRIES, INCLUDING REVIEW OF INDUSTRY COMMITTEE'S WORKING PARTY 1 STUDY ON PENETRATION OF OECD COUNTRY MANUFACTURING INDUSTRIES BY MNE'S. SWISS PROPOSAL FOR CIME TO CONSIDER SPECIFICALLY ISSUE OF OPEC INVESTMENTS IN OECD COUNTRIES WAS WELL RECEIVED. COMMITTEE AGREED THAT CIME MIGHT ALSO USEFULLY EXCHANGE VIEWS ON MEMBER COUNTRY EXPERIENCES WITH RESPECT TO INVESTMENT PROTECTION AND AT SOME STAGE IN 1978, START FOCUSING ON PROCEDURE TO BE FOLLOWED IN REVIEWING OECD MINISTERIAL DECLARATION.

22. DISCUSSION OF TWO SECRETARIAT NOTES ON DEFINITION OF MNE'S (REFDOC E) AND ON WORK UNDERTAKEN AT AN INTERNATIONAL LEVEL ON HARMONIZATION OF ACCOUNTING STANDARDS (REFDOC F) WAS POSTPONED.

23. NEXT CIME MEETING WILL BE HELD DECEMBER 5 AND 6, 1977.

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